IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12001 of 2004
With
SPECIAL CIVIL APPLICATION No. 12066 of 2004

For Approval and Signature:

HON'BLE MR JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHIKHUBHAI VITTHALBHAI PATEL & 26 - Petitioner(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

SCA No.12001 of 2004.

MR SH SANJANWALA, SR. ADVOCATE WITH MR RS SANJANWALA for the petitioners.
MR KB TRIVEDI, ADDITIONAL ADVOCATE GENERAL, WITH MS.SANGITA VISHAN, AGP, for Respondent No. 1.
MR UI VYAS for Respondent No(s).: 2.

SCA No.12066 OF 2004

MR YATIN OZA, SR. ADDVOCATE AND MR R.J.OZA WITH MS.M.N.UKANI for the petitioners.

MR KB TRIVEDI, ADDITIONAL ADVOCATE GENERAL, WITH MS.SANGITA VISHAN, AGP FOR for Respondent No. 1 & 3.

MR UI VYAS for Respondent No(s).: 2.
Mr.J.R.Shah for respondent No.4.

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CORAM : HON'BLE MR JUSTICE AKIL KURESHI
Date : 11/08/2005

ORAL JUDGMENT

Since factual and legal controversies arising in these petitions are common, both these petitions have been heard together and are being disposed of by this common judgment.

2. In an order dated 24th February 2005, learned single Judge of this Court had recorded that the matter will be heard finally on the next date i.e. 23rd March 2005 or any other subsequent date. Accordingly, these petitions were argued before me at considerable length by the learned advocates appearing for the parties.

3. In these petitions, the petitioners who are the land owners of land situated at village Barthana-Vesu which is in the vicinity of Surat City have challenged the action of the Government designating their lands for educational use.

4. Facts in brief, which are not in dispute can be

noted at the outset.

4.1 The petitioners in these petitions are owning different parcels of lands in the above mentioned villages in the vicinity of Surat City. On 4.8.81, Surat Urban Development Authority (SUDA for short) submitted a draft development plan to the State Government under section 16 of the Gujarat Town Planning and Urban Development Act, 1976 (hereinafter to be referred to as “the said Act”) wherein proposals for reservation and designation for different areas were recommended by the SUDA. It is not in dispute that with respect to the lands with which the present petitions are concerned, they were proposed to be designated for residential use. The State Government issued a preliminary notification under section 17(1)(a) of the said Act inviting objections and suggestions proposing to provide for reservations of the lands in question for “Education Complex of South Gujarat University”. On 31.1.86, the State Government published a notification under section 17(1)(c) of the said Act which was a notification for final development plan and the above reservation for Education Complex of South Gujarat University came to be indicated as part of the Final Development Plan in the

notification dated 31.1.86. Pursuant to the said notification as indicated therein, Final Development Plan for the entire area including the present lands came into operation with effect from 3rd March 1986. Since as per the provisions of section 21 of the said Act, the Final Development Plan is required to be revised at least once in ten years from the date when the final development plan comes into operation, the State Government, after undertaking an exercise of preparing a revised development plan issued a fresh notification on 29th February 1996 wherein also the lands in question were placed under reservation for Education Complex of South Gujarat University.

4.2 In the meantime, the petitioners and some other similarly situated land owners of the same area served a notice upon the authorities for acquisition of the lands in question on expiry of a period of ten years from the coming into operation of the initial final development plan. The petitioners called upon the authorities to acquire the land within a period of six months. Since no acquisition was made by the authorities and the lands in question were proposed for re-reservation for the very same purpose of Education

Complex of South Gujarat University, the present petitioners and some other similarly situated land owners approached this High Court by filing Special Civil Application No.6519 of 1998 and allied matters. This group of petitions filed by the land owners of Surat along with other petitions filed by the land-owners of Bhavnagar and Vadodara came to be heard together by a Division Bench of this Court. Along with the said group of petitions, the High Court also took up for hearing petitions filed by the rival group of petitioners who were supporting such continuation of re-reservation of the lands for the said purpose. Before the Division Bench, the petitioners contended that upon completion of a period of 10 years from the date of the final development plan having come into operation, the petitioners had a right to call upon the respondents to acquire the land in question for the stated purpose and if such acquisition by agreement was not carried out within a period of six months thereof or no steps were taken for commencement of the acquisition other wise than by agreement, the petitioners would have a right to insist that the lands in question be released from such reservation.

4.3 The entire group of petitions came to be disposed by the Division Bench of this High Court by the judgment dated 24th November 2000 which has been reported in 2001 (2) G.L.H.294 (Palitana Sugar Mill v. State of Gujarat). In the said decision, the Division Bench of this Court was pleased to allow the petitions filed by the petitioners and was further pleased to hold that the lands of the petitioners not having been acquired within the prescribed time limit under section 20(2) of the said Act would stand de-reserved irrespective of issuance of proposed revised development plan or the final revised development plan under section 21 of the said Act. The petitions filed by the rival groups came to be rejected.

4.4 The State Authorities carried the decision of the High Court in appeal before the Hon'ble Supreme Court and the Hon'ble Supreme Court by the judgment reported in the cse of Bhavnagar University v. Palitana Sugar Mill (P) Ltd., (2003) 2 SCC 111 was pleased to uphold the decision of the Division Bench of this Court and was pleased to reject the appeals. I will advert to these decisions at some length at a later stage.

4.5 After the decisions of this High Court and the Hon'ble Supreme Court, the State Government undertook the exercise afresh for making proposals with respect to the lands in question in terms of the provisions of the said Act. On 22nd July 2004, a preliminary notification came to be issued by the State Government in exercise of powers under proviso to sub-clause (ii) of clause (a) of sub-section (1) of section 17 of the said Act. In the said notification, proposal was made to modify the draft revised development plan pertaining to the land in question and it was provided that for the land in question indicated in the schedule to the notification reservation for “Education Complex of South Gujarat University” shall be deleted and the land so released shall be designated for Educational Use under section 12(2)(o) of the said Act. The affected persons were called upon to submit their suggestions and objections, if any, with respect to the said proposal in writing within a period of two months from the date of publication of the notification in the official gazette.

4.6 The petitioners crying foul filed the present petitions at that stage contending that once this High Court and the Hon'ble Supreme have struck down the

action of the Government in re-reserving the lands in question for the purpose of Education Complex of South Gujarat University, it is not open for the State Government to once again designate the land in question for Educational Use. The petitioners simultaneously also submitted their objections before the Government. Detailed objections in writing were raised on behalf of the petitioners opposing the proposal of the Government indicated in the said notification dated 22nd July 2004. During the pendency of the petitions, the State Government issued a final notification dated 28th September 2004. The proposal for designating the lands in question for Educational Use under section 12(2)(o) of the said Act was given a final shape and by the notification in question, the decision of the Government was formally finalised to designate the lands in question for Educational Use. The petitioners by way of amendments permitted by the Court have challenged the subsequent notification dated 28th September 2004 issued by the State government also in these petitions.

5. Having thus noted the undisputed facts leading to these petitions, one may now advert to the pleadings on record.

5.1 In Special Civil Application No.12001 of 2004, it is mainly contended that the lands in question have been continued under reservation from time to time since 1986 and the owners are unable to develop their lands and the lands are lying vacant since long. It is contended that after examining all aspects of the matter, a Division Bench of this Court had struck down the action of the Government in re-reserving the lands for the use of Education Complex of South Gujarat University. It is contended that the decision of the High Court having been upheld by the Hon'ble Supreme Court, the petitioners cannot be prevented from utilizing their lands freely and the action of designating the lands for Educational Use amounts to re-reserving the lands which was not permitted by this Court as well as the Hon'ble Supreme Court. It is contended that the Urban Development Authority had proposed the lands in question and the entire area surrounding the land for residential use. It is contended that it is therefore now not open for the Government to designate the lands in question as educational zone alone. It is contended that the action of the Government amounts to colourable exercise of

power and the same is per-se malafide and bad in law.

5.2 It is stated that under the General Development Control Regulations of SUDA (hereinafter to be referred to as GDCR), the land reserved for residential use can also be developed for professional offices, bank, hotel, public buildings, educational institutions such as schools, colleges, technical and vocational educational institutions, library, indoor hospital, nursing home, surgical hospital, club house, community hall, light industries, etc. It is, therefore, stated that there was no need or question of placing the lands in question only for educational use. It is further contended that under similar situation whereby the very same judgment the Division Bench was pleased to strike down the re-reservation of the lands in case of Bhavnagar University, the Government has released such lands from reservation and has designated the same for residential use. It is contended that the action of the Government in case of the present petitioners therefore amounts to hostile discrimination violative of Article 14 of the Constitution of India. It is further contended that the petitioners cannot be deprived of their legal right of developing their lands

for legitimate purpose by providing for successive reservations/designations. It is stated that now that the lands of the petitioners have already been released from reservation pursuant to the decision of the High Court as upheld by the Hon'ble Supreme Court, re-reservation of the same under purported exercise of power under section 12(2)(o) of the said Act in teeth of the said judgments is not permissible. It is also stated in the petition that the lands for the use of educational purposes is available in abundance not only for the requirements at present, but also for future requirements. It is contended that the very fact that the lands in question though reserved for the purpose of of South Gujarat University could not be acquired for a long period of time, and the acquisition ultimately had to be given up, would show that there is no further need to designate the land for educational use and the decision of the government is nothing but a colourable exercise of power.

6. In Special Civil Application No.12066 of 2004, in addition to raising similar contentions as raised in Special Civil Application No.12001 of 2004, specific allegations of malafides have been made against

respondent Nos.3 & 4 who are the Minister for Urban Development and Urban Housing Department, Government of Gujarat and Treasurer of BJP respectively.

7. The State Government has filed a detailed affidavit in reply and denied the allegations made in the petitions. In an affidavit dated 22nd February 2005, filed by one Shri V.D.Vaghela, Officer on Special Duty and Ex-Officio Deputy Secretary, Urban Development & Urban Housing Department, Government of Gujarat, it is inter alia, stated that after the decision of the Hon'ble Supreme Court, the State Government issued a notification on 22nd July 2004 under proviso to section 17(1)(a)(ii) of the said Act inviting suggestions and objections with respect to the proposal for modification of the draft revised development plan pertaining to the lands in question by removing the reservation for Education Complex of South Gujarat University and by classifying the same lands for Educational Use under section 12(2)(o) of the said Act. It is stated that what weighed with the State Government was public interest at large. It is stated that the Government thought it fit to classify the lands in question for educational use so that there is a specific pocket of

educational institutional area in the fast developing city of Surat where the population in the last decade has almost doubled. If such educational institutional pockets in the adjoining land, where there already exists the complex of South Gujarat University are not ensured in the Development Plan of the city like Surat, then in that case in future land would not be available. This would make the people to travel long distance from the city area for education. Under these circumstances, it was decided to regulate the development of the land in question in such a manner whereby the lands would remain with the owners for the development for the said purpose. It is contended that the Government has power to impose reasonable restrictions on the use of the land and its development. It is stated that the entire city cannot be governed by a single zone and different use zones have been provided. In the instant case, the zoning would protect the educational area from harmful invasions of commercial and industrial uses while promoting planned and orderly development. It is stated that while forming development plan, individual rights and interests would be subordinated to wider social interests for long term perspective of development. It is stated that only after receiving suggestions and

objections within the prescribed time limit that the proposed modification came to be finalised. It is stated that the decision to classify the area for educational use is a policy matter. It is stated that the Government after having invited suggestions and objections has issued the notification dated 28.9.04 in a fair, legal and reasonable manner. It is stated that there is no requirement for the State Government to reply to each and every suggestions or objections received. However, the Government has finalised the preliminary notification after considering the suggestions and objections of all concerned parties including the petitioners.

7.1 In reply to Special Civil Application No.12066 of 2004, similar averments have been made by the State Government. In addition to the affidavit filed by the authorities, a separate affidavit dated 17th February 2005 came to be filed by respondent No.3, the concerned Minister denying the allegations of malafides made against him.

8. On the basis of the above factual matrix and on the basis of the above noted pleadings, learned advocates

appearing for the parties have made detailed submissions before me.

8.1 Appearing for the petitioners in SCA No.12001 of 2004, learned senior counsel Shri Sanjanwala submitted that the action of the Government is malafide in nature and amounts to colourable exercise of power in face of the decisions of this Court and the Hon'ble Supreme Court in the case of Palitana Sugar Mills (supra). It is contended that once the reservation under section 12(2)(k) of the said Act has elapsed, there would be no further power available to the Government to again designate the same land for educational use under section 12(2)o) of the said Act. It is contended that though the term 'designation' is now replaced by the word 'reservation', in real effect, the lands are still not released for its normal use for residential purpose. It is contended that before issuing notification in question, the State Government was required to satisfy itself that the lands in question would be acquired by the Development Authority within a period of ten years. It is contended that the State Government has not recorded any such satisfaction and that would render the notification illegal and unlawful.

8.2 It is further contended that there is already surplus land available with the South Gujarat University. The lands already acquired have not been put to full utilization. The additional land though reserved for acquisition for the South Gujarat University for years together, the acquisition did not materialise. All this would show that that there is no further need to designate the land for exclusive use for education. It is further contended that even if it is a policy decision of the Government to provide for such designation, there has to be material on record to justify such a decision. It is contended that all throughout, it was the opinion of the officers of the Government that in view of the decisions of the High Court and the Hon'ble Supreme Court in the case of Palitana Sugar Mills (supra), the petitioners are entitled to utilise the land in question for residential purpose. It is contended that the Government had no material to overrule this opinion and to provide for designation of the land exclusively for the purpose of education.

9. Learned Senior Advocate Shri Y.N.Oza appearing for the petitioners in Special Civil Application No.12066 of

2004, in addition to adopting the arguments canvassed by the learned counsel Shri Sanjanwala, submitted that the decision of the Government suffers from gross illegality. He contended that the scheme of the said Act and in particular, the provisions of section 12(2)(o), section 17(2) and section 20(1) of the said Act read conjointly with the provisions of section 21 of the said Act would make it sufficiently clear that the lands in question could not have been designated for limited purpose of educational use alone. He contended that once when the High Court and the Hon'ble Supreme Court have struck down the attempt of the Government to re-reserve the land, in one form or the other, the attempt on the part of the Government is to limit the use and enjoyment of the land in the hands of the land-owners. It is contended that any restriction on the use of the land must be reasonable and must be in conformity with the provisions of the said Act as also the rights guaranteed by the Constitution of India. It was further contended that the Legislature has provided for double safeguard against any arbitrary exercise of power or misuse of power for reserving or designating the land for any purpose. It is contended that as per the provisions of section 17(2) of the said Act, before the Government can designate the land for any of the

purposes specified in section 12(2)(o) of the said Act, the Government has to come to a satisfaction that the authority concerned will be in a position to acquire the land within a period of 10 years. This is in addition to the safeguard provided in section 20(2) of the said Act which confers a right on the land owners to call upon the authorities to acquire the land within a period of six months from the date of receipt of notice. Such notice can be given after a period of 10 years of the life of reservation and if the land is not acquired or no steps are commenced for its acquisition, it is provided that the designation shall be deemed to have lapsed. It is contended that the Government must satisfy the Court about having followed the said safeguards scrupulously. It is contended that in the present case, no such satisfaction as required under sub-section (2)of section 17 has been reached by the Government.

9.1 So far as the requirement under sub-section (2) of section 20 of the said Act is concerned, it is his contention that this Court in the case of Palitana Sugar Mills (supra) has already struck down the action of the Government to re-reserve the land after completion of the period of 10 years of the first

reservation. It is his contention that section 12(2) of the said Act does not envisage a separate zone for education alone and in any case, residuary power under clause (o) of sub-section (2) of section 12 would not be available and the Government's attempt to resort to the said residuary powers, according to him, is not justified. On the aspect of reasonableness of the decision of the Government, he contends that though it is a policy decision, no policy decision can stand the test of law if it is found to be arbitrary or malicious either in law or in fact.

10. At this stage, it would be appropriate to note that though orally it was contended on behalf of the petitioners in Special Civil Application No.12001 of 2004 by learned Senior Advocate Shri Sanjanwala that once the appeals of the Government were disposed of by the Hon'ble Supreme Court in the earlier round of litigation, some of the petitioners had applied to the authorities for being granted permission to develop the land for residential use and upon completion of a period of three months, such permission should be deemed to have been granted in view of the provisions of section 29 of the said Act, I find that there are neither any averments in the petition or in the

rejoinder with supporting documents nor are any consequential prayers made in the petition. In that view of the matter, I do not find it necessary to examine the said contention in the present petition. It may also be noted, at this stage, that though allegations of personal malafides were made in the petition being Special Civil Application No.12066 of 2004, I find that there is no material to permit this Court to hold such allegations as having been proved. In any case, affidavit in reply has been filed by respondent No.3 denying the allegations of personal malafides. In fact, I find that the allegations of malafides were not even pressed in service with any degree of seriousness. This issue, therefore, is closed here.

11. On behalf of the petitioners, reliance was placed on number of decisions of this Court as well as the Hon'ble Supreme Court. The decision of the Division Bench of this Court in the case of Palitana Sugar Mills (supra) was read and re-read extensively before me. As noted earlier, in the said decision, the land-owners of Bhavnagar, Surat and Vadodara, including the present petitioners had challenged the action of the Government in re-reserving the lands after completion of a period

of 10 years of the final development plan having come into force. In case of Surat lands, as noted earlier, lands were reserved for the purpose of South Gujarat University. In exercise of powers under section 21 of the said Act, the Government had proposed to extend such reservation despite the fact that after the completion of the period of 10 years from the commencement of the final development plan, the land-owners had issued a notice to the authorities calling upon the authorities to acquire the land if they so desire within a period of six months and no acquisition proceedings had commenced even after completion of the said period and in this back-ground, the Division Bench of this Court found that re-reservation of the land in exercise of powers under section 21 of the said Act would not be permissible. It was pointed out by the learned advocates appearing for the petitioners that the Division Bench had made the rule absolute without any condition and this would therefore include granting of all the prayers made in the petition. On the basis of the said decision, it was contended that it is now not open for the Government to provide for reservation, in some other form though having the same effect, when once this Court and the Hon'ble Supreme Court found that re-reservation is not permissible.

11.1 Heavy reliance was also placed on the decision of the Hon'ble Supreme Court in the case of Bhavnagar University v. Palitana Sugar Mills (P) Ltd.(supra), by which the Division Bench judgment of this Court in the case of Palitana Sugar Mills (supra) came to be confirmed. In the said case of Bhavnagar University (supra), the Hon'ble Supreme Court was pleased to uphold the decision of the Division Bench of this Court in the case of Palitana Sugar Mills and reject the appeals filed by the Government. My attention was specifically drawn to the observations made by the Hon'ble Supreme Court in para 39 and 40 of the said decision wherein it is observed that what is contemplated under section 21 is to meet the changed situation and contingencies which might not have been contemplated while preparing the first final development plan. The power of the State enumerated under sub-section (1) of section 20 does not become *ipso facto* applicable in the event of issuance of a revised plan as the said provision has been specifically mentioned therein so that the State may use the same power in a changed situation. It was further observed that the statutory interdict of use and enjoyment of the property must be strictly construed. Relying on the decision of the Hon'ble Supreme Court in

the case of Bhavnagar University (supra), it was strongly urged that it was not open for the State Government to provide for designation for educational purpose replacing the reservation for the South Gujarat University and such action is an attempt to over-reach the decision of this Court as well as the Hon'ble Supreme Court.

11.2 Reliance was placed on the decision of the Hon'ble Supreme Court in the case of M/s. Shri Sitaram Sugar Co. Ltd. v. Union of India, AIR 1990 SC 1277 wherein in para 45 to 49, it was observed that though price fixation is in the nature of a legislative action, it is nevertheless imperative that the action of the authority should be inspired by reason and the Government cannot fix any arbitrary price or fix price on extraneous considerations. It was observed that any arbitrary action whether in the nature of legislative or administrative or quasi-judicial exercise of power is liable to attract the prohibition of Article 14 of the Constitution and equality and arbitrariness are sworn enemies. It was further observed that the doctrine of judicial review implies that the repository of power acts within the bounds of the power delegated and he does not abuse his power.

11.3 Reliance was placed on the decision of the Hon'ble Supreme Court in the case of Ugar Sugar Works Ltd. v. Delhi Administration, (2001) 3 SCC 635. In para 18 of the said decision, it was observed that it is well-settled that the courts, in exercise of their power of judicial review, do not ordinarily interfere with the policy decisions of the executive unless the policy can be faulted on grounds of mala fide, unreasonableness, arbitrariness, or unfairness, etc. It was observed that arbitrariness, irrationality perversity and mala fide will render the policy unconstitutional.

11.4 Reliance was placed on a decision of the Hon'ble Supreme Court in the case of Greater Bombay Municipal Corporation v. Dr. Hakimwadi Tenants Assocn., AIR 1988 SC 233. Specific attention of the Court was drawn to the provision of section 127 of the of the Maharashtra Regional and Town Planning Act, 1966 which is somewhat similar to the provisions of section 20 of the said Act, but in addition to the safeguard of lapsing of the reservation after a period of 10 years and serving of a notice calling upon the authorities to acquire the land within a period of six months, the said

section provides that the land shall be deemed to be released from reservations, allotment or designation and shall become available to the owners for the purpose of development as otherwise permissible in the case of adjacent land under the relevant plan. On the basis of this decision, it was contended that though section 20 of the said Act does not make such a specific provision, one can always adopt a similar policy particularly in the background of the facts of the present case and the lands of the petitioners should be covered in the residential zone as proposed by SUDA especially in view of the fact that the entire region surrounding the lands in question is designated in residential zone. It is contended that when the land in question admeasuring about 150 acres is surrounded by residential developments, it is impossible to put the said land for any other use and to provide that the only use to which the land can be put shall be for educational use is putting complete restrictions and fetters on the right of the land-owners of its use and enjoyment.

11.5 Reliance was also placed on the decision of the Hon'ble Supreme Court in the case of Delhi Administration v. Gurdip Singh Uban, (2000) 7 SCC 296 to support the contention that once the High Court made the

rule absolute without any condition of prayers made in the petition, the same should be deemed to have been granted. My attention was drawn to para 32 of the said decision wherein the Hon'ble Supreme Court observed that “Rule absolute” means a rule to show cause upon which on hearing, the court has made a peremptory order that the party shall do as the rule requires. When the rule is made absolute, the court order is a direction for performance of the act forthwith.

11.6 Reliance was placed on the decision in the case of Balakrishna H. Sawant v. Sangli, Miraj & Kupwad City Municipal Corpn., (2005) 3 SCC 61, wherein it was observed that the Municipal Corporation did not have sufficient financial resources to construct the school and playground and therefore the reservation would not serve any purpose except to cause harassment to the land-owners without any corresponding benefit to the Corporation.

11.7 Reliance was placed on the Division Bench decision of this High Court in the case of A.G.G.I. Mandal v. State, 2001 (1) GLR 888 wherein the Division Bench of this Court was though pleased to turn down the challenge to the legislative competence of the State

Legislature to make laws by amending the Gujarat Town Planning and Urban Development Act, enabling the authority to allot land for various purposes, the Bench was pleased to hold that in view of lapsing of the reservation in terms of the provisions of sub-section (2) of section 20 of the said Act, the same lands again cannot be reserved by earmarking the same for allotment for various purposes in exercise of powers under section 40(3) of the said Act.

11.8 Decision of the Hon'ble Supreme Court in the case of Board of Trustees of the Port of Bombay v. Sriyanesh Knitters, (1999) 7 SCC 359 was relied upon to contend that the said Act is not a complete code in itself and that philosophy as manifested in section 127 of the Maharashtra Regional and Town Planning Act, 1966 can be adopted in the present case also.

11.9 Reliance was also placed on the decision of the Hon'ble Supreme Court in the case of Collector of Central Excise v. Jayant Oil Mills, (1989) 3 SCC 343 to contend that resort to residuary clause would not be permissible when specific provisions are made in the Act itself.

12. Appearing for the State Government, learned Additional Advocate General Shri K.B.Trivedi opposed the petitions and supported the decision of the Government. It was contended that the said Act has been enacted with a view to consolidating and amending the law relating to making and execution of development plans and town planning schemes in the State of Gujarat and that there was ample power with the Government to provide for modifications in the draft development plan and such modifications could have been adopted by the Government after following the procedure laid down under section 17 of the said Act. It was contended that even after the decision of the Hon'ble Supreme Court in the case of Bhavnagar University (supra), the land owners did not have the right to develop the land in any manner they like without any restrictions or guidelines. It was contended that the Government followed the procedure required under the law and in particular under the provisions of section 17 of the said Act and after calling for objections and suggestions from the interested citizens against the proposal for including the land in question was placed under designation for educational use. It is contended that only after considering all objections and suggestions received, the State Government as a policy decision found it

appropriate to designate the land in question for exclusive use of educational purpose. He contended that reservation for South Gujarat University is vitally different from designating the lands in question for educational use. He further contended that in case of reservation for South Gujarat University, the land-owners could not have themselves developed the land in question and there was complete embargo in development of the land. The only choice available with the land-owners at the relevant time was to wait for the acquisition of the lands by the authorities for the purpose of South Gujarat University. This reservation though has failed, it is always open for the Government to designate the land in question for appropriate use in exercise of powers under section 17 of the said Act read with section 12(2) of the said Act. It is contended that considering the facts and circumstances and after examining all aspects of the matter, the State Government has come to a conclusion as a matter of policy that the land should be designated for educational use. Such a policy decision cannot be challenged successfully before a Court of law and the court's powers to question such a policy decision of the Government being limited, this Court should not interfere with the decision of the Government and should

not strike down the notification dated 28th September 2004. It is contended that under the final development plan, the land owners are free to develop the lands themselves. The only restriction is that the use that they put must conform to the requirement of educational purpose alone. He submitted that this is not an absolute restriction and limited reasonable restriction can always be imposed by the Government. He further contended that in the matter of town planning, private or personal interest must take a back seat and must be subordinated to the general public interest.

12.1 Heavy reliance was placed on the decision of the Hon'ble Supreme Court in the case of K.L.Gupte v. Corporation, Greater Bombay, AIR 1968 SC 303. In the said decision, the Hon'ble Supreme Court was considering the constitutional validity of the various provisions of Bombay Town Planning Act, 1955. In this regard, it was observed that where large powers are given to certain authorities, the exercise whereof may make serious inroads into the rights of property of private individuals, Courts have to see whether there is any guidance to be collected from the Act itself, its object and its provisions in the light of the surrounding circumstances which made the legislation necessary taken

in conjunction with well known facts of which the Court might take judicial notice. In para 29 of the decision, the Hon'ble Supreme Court observed that one cannot lose sight of the fact that the growth of the city and the industrialization of the surroundings are going on apace and if factories are allowed to be set up just where the owners of certain plots of land want to erect them, it would render large areas unfit for residential purposes. It was observed that in the area covered by Greater Bombay, the Municipalities Authorities have to proceed with caution when sanctioning any development work. Thus observing, the Hon'ble Supreme Court repelled the challenge to the constitutional validity of some of the provisions of the Bombay Act.

12.2 Reliance was placed on the decision of this Court in the case of Champaklal Becharbhai v. State, 1992(2) GLR 958 wherein, in para 13 of the decision, a Division Bench of this Court was pleased to observe that while examining the challenge to the sanction to the final development plan and the variation made therein the purpose for which the development plans are prepared and the object to be subserved by the same needs to be borne in mind. The plans are prepared with wider long-term socio economic perspective in view and

while framing such development plans, individual rights and interests are bound to be subordinated to the wider social interest.

12.3 Reliance was placed on the decision of the Hon'ble Supreme Court in the case of Ahmedabad Urban Development Authority v. Manilal Gordhandas, (1996) 11 SCC 482 wherein in para 14, the Hon'ble Supreme Court was pleased to observe that to prepare a scheme for the development of an urban agglomeration in the present days is a very complex issue and any development authority as well as the State Government which is the sanctioning authority has to apply its mind to the details of such development plans.

12.4 Reliance was also placed on the decision of this Court in the case of Consumer Protection Council v. A.M.C., 2000 (3) GLR 2607 wherein the Division Bench stressed the need for planned development and development in accordance with the rules and regulations provided by the Government and the authorities.

12.5 Reliance was placed on the decision of this Court in the case of Kikabhai v. State, 1988(1) GLR 569, wherein a Division Bench of this Court was pleased

to observe that at the stage of publication of substantial modification, suo motu proposed by the State Government, the person concerned has sufficient opportunity of making objections. Such objections were required to be considered by the concerned authority, but there is no question of giving personal hearing to such persons.

12.6 Reliance was also placed on the decision of the Hon'ble Supreme Court in the case of H.S.S.K. Niyami v. Union of India, (1990) 4 SCC 516 to contend that in the matter of policy, the Government has sufficient discretion and what should be the correct designation for the land in question would not be possible for this Court to suggest when the Government as a policy decision has provided for certain designation.

12.7 Reliance was placed on the decision of this Court dated 14.10.2004 rendered in Special Civil Application No.11110 of 2003 wherein the learned single judge observed that the High Court cannot sit in appeal over the decision of the Town Planning Authority framing the Town Planning Scheme.

12.8 Reliance was placed on the decision of learned single Judge of this Court in the case of Rajan Sakalchand Patel v. State of Gujarat, 1997(1) GLR 31 wherein the learned single Judge was pleased to observe that the State has the power to regulate private rights in public interest.

12.9 Reliance was placed on the decision of the Hon'ble Supreme Court in the case of Balco Employees Union (Regd) v. Union of India, AIR 2002 SC 350 to contend that in a matter of policy decision of the Government, the role of the Court is extremely limited and interference can be made only on certain limited and well recognized grounds and not to substitute its opinion for that of the Government as if the Court is acting as an appellate authority.

12.10 Reliance was also placed on the decision of the Hon'ble Supreme Court in the case of Prabodh Sagar v. Punjab State Electricity Board, (2000) 5 SCC 630 to contend that the parties making allegations of malafides must be put to strict proof thereof.

13. On the basis of the submissions made, the entire controversy and the legal submissions can be divided

into following broad areas.

(A) The first aspect of the challenge is with respect to the power of the Government to provide for designation of the land in question for educational use in face of the decision of this Court as well as the Hon'ble Supreme Court in the earlier round of litigation.

(B) The second limb of arguments of the petitioners is that in view of the statutory provisions and in particular in view of the provisions contained in section 12(2)(o), section 17(1) and section 20(1) read with section 21 of the said Act, there is no possibility of designation the land in question for educational use.

(C) Another area of controversy between the parties is with respect to the contention of the petitioners that the decision of the Government suffers from legal and factual malice. That the entire area is surrounded by residential development and the proposal made by the SUDA way back in 1980's for designating the land in question for residential use and therefore it was not open

for the Government to provide for the designation solely for the purpose of educational use without there being any material on record.

14. Dealing with first and second aspects of the matter together would be convenient since some of the issues and arguments overlap. Before deliberating further on the legal contentions raised by the counsel appearing for the rival parties, it would be necessary to trace the background under which the said Act was enacted and to examine some of the statutory provisions made in the said Act.

15. In the preamble to the said Act, it is stated that an Act to consolidate and amend the law relating to the making and execution of development plans and town planning in the State of Gujarat in exercise of the powers conferred by section 3 of the Gujarat State Legislature (Delegation of Powers) Act, 1976, the President is pleased to enact the same. From the statement of objects and reasons leading to the enactment of the said Act, it can be seen that the Bombay Town Planning Act, 1954, as in force in the State of Gujarat controlled town planning activities only within the areas falling within the jurisdiction of

local authorities. Planning within the peripheral limits of cities and towns had created certain problems. It was, therefore, felt that if planning activities are undertaken on a more rational and scientific basis with reference to development of areas which are not necessarily restricted to the areas within the jurisdiction of local authorities, it will be possible to create better environmental conditions. It was, therefore, considered necessary to replace the Bombay Town Planning Act by a more comprehensive legislation. The Act seeks to achieve this objective. Provisions have been made in this regard for the constitution of area development authorities for all the development areas declared under its provisions with an enabling power to the State Government to specify local authorities as the planning authorities in certain areas. Power has also been given to the State Government to declare urban development areas and to constitute development authorities for such areas. Provision has been made for the preparation and making of development plans and town planning schemes.

16. In the case of A.M.C. v. Chimanlal E.O. Asscn., 1995(1) GLR 224, a Division Bench of this Court had traced the background under which the said Act came to

be enacted. It would be useful to reproduce the same here:

> "12. In order to examine the other rival contentions properly, it will be necessary to refer to the Scheme of the Act of 1915, the Act of 1954 and the 1976 Act. It was by enacting the Bombay Town Planning Act, 1915 that real beginning in town planning was made in the State of Bombay, if not in the whole of India. The object and purpose of that Act was to ensure (1) sanitation, (2) amenities and (3) orderly development in areas under the proposed Town Planning Scheme. The Act of 1915 provided for framing of schemes in order to see that extension areas of towns and cities under process of development should be laid out physically in an orderly manner with as far as possible rectangular plots, with provisions of all services such as road, lighting, drains, sewers, water supply, and also reservations were to be made for all amenities in particulars, schools, playgrounds, hospitals, etc. The drawback of that Act was that each TP Scheme prepared under the Act was prepared exclusively and independently for its own area without any relation to one another or without any relation to the general development of the town as a whole on an integrated basis. The experience showed that inspite of formulation of different town planning schemes in a town the whole town as such presented an unplanned and chaotic development. In order to get over this difficulty, the said Act was replaced by the new Act of 1954.

> It not only provided for preparation of TP Schemes as under the Act of 1915 and provisions in respect of the preparation of the schemes more or less remained the same but it also provided for preparation of development plans for the entire area under the jurisdiction of the local authority. The new concept of development plan was introduced in the Act of 1954 in order to achieve planning development of the whole town or the city. Then came the 1976 Act with improved provisions including provisions for constitution of an Area development Authority for a development area and Urban Development Authority for an urban area. Tough the basic idea of preparation of development plan in the first instance and the schemes later on has been retained in the new Act, now more elaborate provisions have been made in that behalf in the 1976 Act."

With these avowed objects in mind, the said Act came to be enacted.

17. Clause (iv) of section 2 of the said Act defines "area development authority". Clause (ix) of section 2 of the said Act defines "development area" to mean an area declared to be a development area under section 3 or as the case may be, an urban development area under section 22. Clause (x) of section 2 defines "development plan" to mean a plan for the development or re-development or improvement of a development area.

Clause (xxiii) defines “regulation” to mean a regulation made under section 119 and includes zoning and other regulations made as part of a development plan or town planning scheme. Clause (xxviii) of section 2 defines “urban development authority” to mean an urban development authority constituted under section 22. Clause (xxiv) of section 2 defines “urban development area” to mean an area declared to be an urban development area under section 22.

17.1 Section 3 of the said Act, inter alia, empowers the State Government to declare by notification any area in the State to be a development area for the purpose of securing planned development of areas within the State. Sub-section (1) of section 5 of the said Act provides that after declaration of a development area under section 3, the State Government shall, by notification constitute an authority for such area to be called the area development authority of that development area for the purpose of carrying out the functions assigned to an area development authority under the Act. Sub-section (1) of section 7 of the said Act provides for the powers and functions of area development authority which includes the function to undertake the preparation of development plans under the

provisions of the Act for the development of the area and also to control the development activities in accordance with the development plan in the development area.

17.2 Sub-section (1) of section 9 of the said Act provides that as soon as may be after the constitution of an area development authority for any development area under section 5 or designation of a local authority as the area development authority under sub-section (1) of section 6, the area development authority shall, not later than three years after the declaration of such area as a development area or within such time as the State Government may, from time to time, extend prepare and submit to the State Government a draft development plan for the whole or any part of the development area in accordance with the provisions of the Act. Sub-section (2) of section 9 provides that if a draft development plan is not prepared and submitted to the State Government by any area development authority within the prescribed time or within the extended period, the State Government may appoint an officer to prepare and submit to the State Government in prescribed manner a draft development plan.

17.3 Sub-section (1) of section 12 of the said Act provides that a draft development plan shall generally indicate the manner in which the use of land in the area covered by it shall be regulated and also indicate the manner in which the development therein shall be carried out. Sub-section (2) of section 12 of the said Act provides that in particular, the development plan shall provide so far as may be necessary for all or any of the matters specified in clause (a) to (o) of sub-section (2) of section 12. Sub-section (1) of section 12 of the said Act and sub-section (2) of section 12 in so far as the same is relevant for our purpose, are reproduced herein-below:

> "12.(1) A draft development plan shall generally indicate the manner in which the use of land in the area covered by it shall be regulated and also indicate the manner in which the development therein shall be carried out."
> (2) In particular, it shall provide, so far as may be necessary, for all or any of the following matters, namely :-
>
> (a) proposals for designating the use of the land for residential, industrial, commercial, agricultural and recreational purposes;
>
> (b) proposals for the reservation of land for public purposes, such as schools, colleges and

other educational institutions, medical and public health institutions, markets, social welfare and cultural institutions, theaters and places for public entertaining, public assembly, museums, art galleries, religious buildings, playground, stadiums, open spaces, dairies and for such other purposes as may, from time to time, be specified by the State Government;

(c) proposals for designation of areas for zoological gardens, green belts, natural reserves and sanctuaries;

xxxx

xxxx

(h) preservation, conservation and development of areas of natural scenery and landscape;

(i) preservation of features, structures or places of historical, natural, architectural or scientific interest and of educational value;

(k) proposals for the reservation of land for the purpose of Union, any State, local authority or any other authority or body established by or under any law for the time being in force;

(m) provision for controlling and regulating the use and development of land within the development area, including imposition of conditions and restrictions in regard to the open space to be maintained for buildings, the percentage of building area for a plot, the location, number, size, height, number of stories and character of

buildings and density of built up area allowed in specified area, the use and purposes to which a building or specified areas of land may or may not be appropriated, the sub-divisions of plots, the discontinuance of objectionable uses of land in any area in any specified periods, parking spaces, loading and unloading space for any building and the sizes of projections and advertisement signs and hoardings and other matters as may be considered necessary for carrying out the objects of this Act;

(o) such other proposals for public or other purposes as may from time to time be approved by the area development authority or as may be directed by the State Government in this behalf."

17.4 Sub-section (1) of section 13 of the said Act provides for publication of the draft development plan in official gazette along with notice in prescribed manner inviting suggestions and objections from any person with respect to development plan within a period of two months from the date of its publication. Section 14 of the said Act requires the development authority or as the case may be, the authorized officer to consider the suggestions and objections received within the prescribed period and empowers the said authority to modify such plan as thought fit. Section 15 of the

said Act, however, provides that when the modifications made by an area development authority or the authorized officer in the draft development plan are of an extensive or of a substantial nature, the said authority shall publish the modifications in the official gazette once again calling for objections within the prescribed period of two months and provisions of section 14 shall apply in relation to such objections and suggestions also.

17.5 Sub-section (1) of section 16 of the said Act provides for submission of the draft development plan to the State government within the prescribed period. Sub-section (2) of section 16 requires the authorities to submit to the State Government particulars published under section (2) of section 13 and suggestions or objections received under section 14 or section 15 along with draft development plan.

17.6 Sub-section (1) section 17 of the said Act provides for the action to be taken by the State Government on the draft development plan submitted by the area development authority. Sub-section (2) of section 17 of the said Act, provides that when the draft development plan submitted contains proposals for the

reservation of any land for a purpose specified in clause (b) or clause (n) or clause (o) of sub-section (2) of section 12 and such land does not vest in the area development authority, the State Government shall not include the said reservation in the development plan unless it is satisfied that such authority would acquire the land, whether by agreement or compulsory acquisition, within ten years from the date on which the final development plan comes into force. Section 17 of the said Act needs to be reproduced in its entirety. It reads as follows:-

> “17. (1)(a) On receipt of the draft development plan under section 16, the State Government may, by notification -
> (i) sanction the draft development plan and the regulation so received, within the prescribed period, for the whole of the area covered by the plan or separately for any part thereof, either without modification, or subject to such modification, as it may consider proper; or
>
> (ii) return the draft development plan and the regulations to the area development authority or, as the case may be, to the authorised officer, for modifying the plan and the regulations in such manner as it may direct:
>
> Provided that, where the State Government is

of opinion that substantial modifications in the draft development plan and regulations are necessary, the State Government may, instead of returning them to the area development authority or, as the case may be, the authorised officer under this sub-clause, publish the modifications so considered necessary in the Official Gazette along with a notice in the prescribed manner inviting suggestions or objections from any person with respect to the proposed modifications within a period of two month from the date of publication of such notice; or

(iii) refuse to accord sanction to the draft development plan and the regulations and direct the area development authority or the authorised officer to prepare a fresh development plan under the provisions of this Act.

(b) Where a development plan and regulations are returned to an area development authority, or, as the case may be, the authorised officer under sub-clause (ii) of clause (a), the area development authority, or, as the case may be, the authorised officer, shall carry out the modifications therein as directed by the State Government and then submit them as so modified to the State Government for sanction, and the State Government shall thereupon sanction them after satisfying itself that the modification suggested have been duly carried out therein.

(c) Where the State Government has published the

modification considered necessary in a draft development plan as required under the proviso to sub-clause (ii) of clause (a), the State Government shall, before according sanction to the draft development plan and the regulations, take into consideration the suggestions or objections that may have been received thereto, and thereafter accord sanction to the drafts development plan and the regulations in such modified form as it may consider fit.

(d) The sanction accorded under clause (a), clause (b) or clause (c) shall be notified by the State Government in the Official Gazette and the draft development plan together with the regulations so sanctioned shall be called the final development plan.

(e) The final development plan shall come into force on such date as the State Government may specify in the notification issued under clause (d):

Provided that the date so specified shall not be earlier than one month from the date of publication of such notification.

(2) Where the draft development plan submitted by an area development authority or, as the case may be, the authorised officer contains any proposals for the reservation of any land for a purpose specified in clause (b) or clause (n) or clause (o) of sub-section (2) of section 12 and such land does

not vest in the area development authority, the State Government shall not include the said reservation in the development plan, unless it is satisfied that such authority would acquire the land, whether by agreement or compulsory acquisition, within ten years from the date on which the final development plan comes into force.

(3) A final development plan which has come into force shall, subject to the provisions of this act, be binding on the area development authority concerned and on all other authorities situated in the area of the development plan.

(4) After the final development plan comes into force, the area development authority concerned may execute any work for developing, re-developing or improving any area within the area covered by the plan in accordance with the proposals contained in the development plan."

Next section which is relevant is section 20 of the said Act which reads as under:

"20.(1) The area development authority or any other authority for whose purpose land is designated in the final development plan for any purpose specified in clause (b), clause (d), clause (f), clause (k), clause (n) or clause (o) of sub-section (2) of section 12, may acquire the land either by agreement or under the provisions of the Land Acquisition Act, 1894.

> (2) If the land referred to in sub-section (1) is not acquired by agreement within a period of ten years from the date of coming into force of the final development plan or if proceedings under the Land Acquisition Act, 1894 are not commenced within such period, the owner or any person interested in the land may serve a notice on the authority concerned requiring it to acquire the land and if within six months from the date of service of such notice the land is not acquired or no steps are commenced for its acquisition, the designation of the land as aforesaid shall be deemed to have lapsed.

Section 21 of the Act provides that at least once in 10 years from the date on which the final development plan comes into force, the area development authority shall revise the development plan. Section 21 of the said Act reads as follows:

> “21. At least once in ten years from the date on which a final development plan comes into force, the area development authority shall revise the development plan after carrying out, if necessary, a fresh survey and the provisions of sections 9 to 20 shall, so far as may be, apply to such revision.”

18. On the basis of the above noted statutory

provisions which have been enacted by the Legislature in the background of the need for enactment of the said Act and with the objects and reasons noted hereinabove, it is necessary for me to examine the true interpretation of some of the provisions in light of the submissions made before me.

19. Before embarking on this exercise, it would be useful to notice some of the decisions of the Hon'ble Supreme Court and this Court which would provide for guiding light to enable me to interpret the provisions made by the Legislature.

19.1 In the case of Reema Aggarwal v. Anupam, AIR 2004 SC 1418, the Hon'ble Supreme Court noted with approval the observations made in an earlier decision in the case of Reserve Bank of India v. General Finance and Investment Co. Ltd., AIR 1987 SC 1023 to the effect that interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted.

With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word.

19.2 In the case of Union of India v. Rajiv Kumar, AIR 2003 SC 2917, in para 27 of the judgment, the Hon'ble Supreme Court observed that the golden rule for construing wills, statutes, and, in fact, all written instruments has been that the grammatical and ordinary sense of the words is to be adhered to unless that would lead to some absurdity or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified so as to avoid that absurdity and inconsistency, but no further.

19.3 In the decision of Bhavnagar University (supra) also the Hon'ble Supreme Court observed that it is the basic principle of construction of statute that the same should be read as a whole, then chapter by chapter, section by section and word by word. Recourse to construction or interpretation of statute is necessary when there is ambiguity, obscurity, or inconsistency therein and not otherwise. An effort must be made to give effect to all parts of the statute and

unless absolutely necessary, no part thereof shall be rendered surplusage or redundant. It was further observed that true meaning of a provision of law has to be determined on the basis of what it provides by its clear language with due regard to the scheme of law.

20. With these judicial principles for interpretation of statute in mind, I may take note of some of the observations made by the Hon'ble Supreme Court as well as this Court with respect to the philosophy of Town Planning and the complexities of the task on hand.

20.1 In the case of K.L.Gupte (supra), the Hon'ble Supreme Court made the following observations:

> “9. Before examining the contention on the points of law raised in this case, it is necessary to appreciate what the Act sought to achieve and why it was brought on the statute book. In order to do this, it is necessary to take stock of the position at the time of its enactment so that attention may be focused on the situation calling for a remedy and how the Legislature sought to tackle it. It is common knowledge that for a number of years past, all over India, there has been and is continuing a great influx of people from the villages to towns and cities for the purpose of residence and

employment. Besides this the whole of the country is in the grip of a population explosion. Another circumstance to be reckoned with is that industrial development is taking place in and round about many cities which in its turn is attracting people from outside. Most of our towns and cities have grown up without any planning with the result that public amenities therein are not being found to be wholly inadequate for the already enlarged and still expending population. The roads are too narrow for modern vehicular traffic. The drainage system, as such as it obtains in most of the towns and cities is hopelessly inadequate to cope with the requirements of an already overgrown population. In most of the towns and cities there is no room for expansion of public amenities like hospitals, schools, colleges and libraries or parks. Some improvement has been sought to be made by Town Improvement Acts enacted in different States. In order that the suburbs and the surroundings of towns and cities be developed properly and not allowed to grow haphazard, the Legislature of Bombay felt that town should be allowed to grow only on planned schemes formulated on the basis of a development plan. All “local areas” which may be equated roughly with Municipalities were to have development plans so that an overall picture might be taken of the needs of the expanding town or city and provision made for planned development with regard to roads and streets, sanitary arrangements, like drainage and water supply, places of public utility, industrial development etc. The Legislature was well aware of the practical

difficulties and the magnitude of the task. A development plan for a huge area like Greater Bombay could not be formulated within a space of weeks or months. A survey had to be made of the area under the local authority to take note of the existing conditions and the plan prepared keeping in mind the facilities available and those which might be had in the foreseeable future. Sections of the are have to be set apart in the different localities for industrial and commercial development, for private housing for the purpose of the Union or the State, for educational and other institutions, as also for parks and places of public resort. The authority responsible for the drawing up of the plan had to have regard to the wishes and suggestions of the public and in particular, architects, engineers, industrialists, and public bodies. Of necessity, a skeleton plan had to be sketched at first which could be given a final shape after considerable deliberation following the suggestions of the parties interested and the recommendations received. Let us now see how the Legislature of Bombay sought to tackle this huge problem."

20.2 In the decision of Padma v. Hiralal Motilal Desarda, (2002) 7 SCC 564, commenting on the need for laws dealing with the development planning, the Hon'ble Supreme Court made the following observations :

"31. Laws dealing with development planning are indispensable to sanitation and healthy urbanization. Development planning comprehensively takes care of statutory, manual, administrative and land-use laws hand in hand with architectural creativity. In the words of a well-known architect, development planning is the DNA of urbanization – the genetic code that determines what will get built. A development plan is essential to the aesthetics of urban society. American Jurisprudence 2d (Vol.82, at p.388) states:

> " 'Planning', as that term is used in conneciton with community development, is a generic term, rather than a word of art, and has no fixed meaning. Broadly speaking, however, the term connotes the systematic development of a community or an area with particular reference to the location, character, and extent of streets, squares, and parks, and to kindred mapping and charting. Planning has in view the physical development of the community and its environs in relation to its social and economic well-being for the fulfillment of the rightful common destiny, according to a 'master plan' based on careful and comprehensive surveys and studies of present conditions and the prospects of future growth of the municipality, and embodying scientific teachings and creative experience."

32. The significance of a development planning

cannot therefore be denied. Planned development is the crucial zone that strikes a balance between the needs of large-scale urbanization and individual building. It is the science and aesthetics of urbanization as it saves the development from chaos and uglification. A departure from planning may result in disfiguration of the beauty of an upcoming city and may pose a threat for the ecological balance and environmental safeguards."

20.3 In the case of M.C.Mehta v. Union of India, (2002) 9 SCC 534, the Hon'ble Supreme Court stressed the need for town planning and gave directions to the authorities for taking appropriate steps for shifting the industries outside the city of Delhi.

20.4 In the case of State of A.P. v. N.Audikesava Reddy, (2002) 1 SCC 227, the Hon'ble Supreme Court observed that development and town planning are ongoing processes and they go on changing from time to time depending upon the local needs. This is also stated in the case of H.H.M.S.P.Gaekwad v. S.H.Patel, 2001 (3) GLR 2097 wherein in para 37 the Hon'ble Supreme Court was pleased to observe that town planning differs from State to State and that development and town planning are ongoing process and they go on changing depending upon the local needs.

20.5 In the case of Municipal Corporation, Ludhiana v. Balinder Bachana Singh, (2004) 5 SCC 182, the Hon'ble Supreme Court stressed the need for providing lung space in the form of green spaces and green belts in cities.

20.6 In the decision of Champaklal Becharbhai (supra), as noted earlier, a Division Bench of this Court had already stressed that while framing development plan individual rights and interests are bound to be subordinated to the wider social interest. In the case of Friends Colony Development Committee v. State of Orissa, reported in (2004) 8 SCC 733 also the Hon'ble Supreme Court made similar observations and found that while regulating the building activities though they restrict the freedom of individual property owners to use their property, the same cannot be termed as arbitrary or unreasonable and private interest in such cases stand subordinated to public good.

20.7 In the case of Howrah Municipal Corporation v. Ganges Rope Co. Ltd, (2004) 1 SCC 663, it was observed that building plans are governed by statutory provisions which are intended to ensure proper administration and to provide proper civic amenities and

there is no vested right divorced from public interest or public convenience in favour of any person.

21. Bearing these judicial pronouncements in mind, if the statutory scheme of the said Act and the provisions made thereunder are adverted to, it would appear that under sub-section (2) of section 12 of the said Act, the Area Development Authority has wide powers for regulating the development of a development area by providing for different designations or reservations. For example, under clause (a) of sub-section (2)of section 12, designation can be made for the use of land for residential, industrial, commercial, agricultural and recreational purposes. Under clause (b) of sub-section (2) of section 12, proposal can be made for reservation of land for public purposes, such as schools, colleges and other educational institutions, medical and public health institutions, markets, social welfare and cultural institutions, etc. Proposal for designation of areas dealing with gardens, green belts, natural reserves and sanctuaries can be made under clause (c) of sub-section (2) of section 12. The area development authority has the power to make provisions for preservation, conservation, and development of areas of natural scenery and landscape under clause (h) of

section 12(2). Under clause (k) of sub-section (2) of section 12, provisions are made for reservation for land for the purpose of Union, any State or local authority or body established by or under any law for the time being in force. Clause (m) of sub-section (2) of section 12 empowers the area development authority to make provisions for controlling and regulating the use and development of land within the development area including imposition of conditions and restrictions in regard to open space to be maintained by the buildings and such other details. Clause (n) of sub-section (2) of section 12 permits the development authority to make provisions for preventing or removing pollution of water or air caused by the discharge of waste or other means as a result of the use of land. Clause (o) of sub-section (2) of section 12 is a residuary clause and empowers the area development authority to make such other proposals for public or other purposes as may from time to time be approved by the area development authority or as may be directed by the State Government. It can thus be seen that the powers vested in the area development authority under sub-section (2) of section 12 of the said Act are of wide nature. Widest possible width and amplitude has been permitted to the area development authority for making detailed provisions for

regulating the use of land in the development area. As noted earlier, considering the complex requirements of town planning in the modern day life, the Legislature has thought it fit to empower the development authority to go into the details of a particular development area which not only includes the city but also the peripheral areas and to provide for details of various aspects which would be necessary for proper growth and development of the city and its surrounding areas. The language used in various clauses of sub-section (2) of section is wide and would permit the development authority to make provisions for various requirements to make designation and reservation for various purposes including public purposes. In the decision of Palitana Sugar Mills (supra), a Division Bench of this Court has already held that the term “designation” and “reservation” is inter-changeable in so far as the same are used in sub-section (2) of section 12. Quite apart from providing for various different purposes for which designation or reservation can be provided in the draft development plan, clause (o) of sub-section (2) of section 12 provides for a residuary clause empowering the development authority to make proposal for public or other purposes as approved by the authority or as may be directed by the State Government. Thus, apart from the

wide range of subjects for designation or reservation made under various clauses of sub-section (2) of section 12, clause (o) of sub-section (2) of section 12 empowers the authority to provide for such other proposals for public or other purposes as may be approved. This residuary clause would cover all necessary subjects and cannot be restricted in any manner to exclude the education zone as is sought to be suggested by the petitioners. Clause (o) of sub-section (2) of section 12 does not restrict the residuary power only for public purpose, but envisages exercise of residuary powers even for purposes other than public purpose. In that view of the matter, it is not possible to give a restricted meaning to cover only other public purposes as may not have been found place in other clauses of sub-section (2) of section 12. Clause (o) of sub-section (2) of section 12 envisages proposals for public as well as purposes other than public purpose. In that view of the matter, I am unable to accept the contention raised on behalf of the petitioners that only five zones as provided for in clause (a) of sub-section (2) of section 12, namely, residential, industrial, commercial, agricultural and recreational zones are envisaged under the said Act and no reservation or designation can be made for any other purpose. Such a contention is not

borne out from the language of sub-section (2) of section 12. In clause (b) of sub-section (2) of section 12 itself, the Legislature empowers the development authority to make proposals for reservation of land for public purposes, such as, schools, colleges and other educational institutions. It is, therefore, not possible to accept the suggestion on behalf of the petitioners that designation can be made only for residential, industrial, commercial, agricultural or recreational purposes as provided in clause (a) of sub-section (2) of section 12 of the said Act.

22. Upon presentation of the draft development plan by the area development authority to the State Government, the State Government has to take action as provided in sub-section (1) of section 17 of the said Act. From the reading of sub-section (1) of section 17 of the said Act, as reproduced herein-above, it can be seen that on receipt of the draft development plan, the State Government may either (i) sanction the draft development plan for the whole of the area covered by the plan or separately for any part thereof either without modification or subject to such modification as it may consider proper or (ii) return the draft development plan and the regulations to the area

development authority for modifying the plan and the regulations in such manner as it may direct, or (iii) if the State Government is of the opinion that substantial modifications in the draft development plan and regulations are necessary, the State Government may, instead of returning them to the area development authority, publish the modifications so considered necessary and invite suggestions and objections from the members of public with respect to the proposed modifications, or (iv) refuse to accord sanction to the draft development plan and the regulations and direct the area development authority to prepare a fresh development plan under the provisions of the said Act. It can, thus, be seen that once the draft development plan is submitted to the State Government, the State Government has power to call for suggestions and objections by publication of the proposed modifications in the official gazette if the State Government is of the opinion that substantial modifications in the draft development plan and the regulations are necessary. As per clause (c) of sub-section (1) of section 17, after publication of the modifications in a draft development plan, the State Government is required to take into consideration the suggestions or objections received before according sanction to the draft development plan

and the regulations in such modified form as it may considered fit. As per clause (d) of sub-section (1) of section 17, the sanction accorded under clause (a), clause (b) or clause (c) has to be notified by the State Government in the official gazette and the draft development plan together with regulations so sanctioned are to be treated as final development plan which as per clause (e) of sub-section (1) of section 17 shall come into force on such date as the State Government may specify in the notification, which date shall not be earlier than one month from the date of publication of such notification. The entire scheme of sub-section (1) of section 17 of the said Act makes it abundantly clear that upon receipt of the draft development plan from the area development authority, the State Government has ample power to carry out extensive modifications in the draft development plan. Such modifications, however, have to be preceded by publication of modifications in the official gazette permitting the citizens to make suggestions and objections within the prescribed time and only after considering the objections and suggestions, the final development plan can be sanctioned subject to such conditions as are found necessary.

23. In the present case, therefore, when the reservation made for the purpose of South Gujarat University was struck down by the Courts, the entire issue was at large before the Government for consideration of regulating of the development of the land in terms of the provisions of the said Act. So far as the power of the Government to provide for any designation for the use of the land in question is concerned, I do not find that the Government lacked any power. After releasing the lands in question from the reservation for the purpose of South Gujarat University, it was open for the Government to consider placing the said parcel of land in such zone for development as found necessary in the interest of proper development of the area. I see no warrant either in the decision of this Court in the case of Palitana Sugar Mills (supra) or in the decision of the Hon'ble Supreme Court in the case of Bhavnagar University (supra) or in the provisions of the said Act and in particular section 12 and section 17 of the said Act read with sections 20 and 21 of the said Act to suggest that once a reservation has been struck down as being inoperative, the land should be permitted to be utilized in any manner as the land owners may desire. There is no mandate from the courts nor is there any possibility of construing the

statutory provisions to uphold the contention of the learned advocates for the petitioners that once the reservation had lapsed, the land owners were free to use and enjoy their lands without any restrictions. In that view of the matter, the action of the Government in inviting objections and suggestions through its notification dated 22nd Jul6 2004 does not lack any competence.

24. It is true that this Court in the case of Palitana Sugar Mills (supra) struck down the re-reservation of the land for the purpose of South Gujarat University. It is also true that the land owners after the period of 10 years was over, had issued a notice under section 20(2) of the said Act calling upon the authorities to acquire the land within a period of six months and once the said period is over without there being any movement for acquiring the land in question, there is no possibility of re-reservation simply on account of fresh exercise having been undertaken by the Government for re-reserving under section 21 of the said Act. In the present case, however, what is done by the Government is to designate the land in question for educational use. The two purposes, namely, reservation for South Gujarat University and designation for

education use are vitally different. In the former, the land-owner has no role to develop the land in question and he only has to wait for the authorities to acquire the land for the purpose for which it is reserved, whereas, in the later case, though there is a restriction of development of the land, it permits the land owner or any other person acquiring the title from the land owner to develop the land in question for a particular purpose. There is no element of acquiring the land by the Government or the development authority and the designation is like any other designation restricting the use of the land in question. The two purposes, therefore, though appear to be similar on the face of it, are vastly different. To wit, it is not a case where the two purposes are identical twins or clones as is suggested by the learned advocates for the petitioners. Their physical appearance may make them look-alikes, but similarity in appearance is wholly incidental. In that view of the matter, I am of the opinion that despite striking down of the reservation or re-reservation, as is being suggested, by a Division Bench of this Court in the case of Palitana Sugar Mills (supra) as upheld by the Hon'ble Supreme Court in the case of Bhavnagar University (supra), it was open for the State Government to undertake the exercise of

designating the land in question for appropriate purpose under any of the clauses of sub-section (2) of section 12 of the said Act. I am not impressed by the contention of the petitioners' counsel that clause (o) of sub-section (2) of section 12 could not have been pressed in service when clause (b) of sub-section (2) of section 12 already provided for designating the land for educational purposes. Even if the powers vested in the authorities overlap by mere inaccurate recording of the provisions under which the power is exercised would not invalidate the exercise of power itself nor the inclusion of clause (o) of sub-section (2) of section 12 and sub-section (2) of section frustrate the action of the Government. It may be noted that by virtue of section 7(2) of the Amendment Act 1999, clause (o) of sub-section (2) of section 12 was added in sub-section (2) of section 17 of the said Act. In view of addition of clause (o) of sub-section (2) of section 12 in section 17(2), it was contended that the State Government could not have included the land in question for reservation in the development plan without being satisfied that the authority would acquire the land whether by agreement or compulsory acquisition within ten years from the date on which the final development plan comes into force. It is not in dispute that no

such satisfaction has been recorded by the State Government. This, however, in my view would not invalidate the action of the Government. Sub-section (2) of section 17 of the said Act cannot be read in isolation and has to be construed harmoniously with other provisions of the Act and in particular sub-section (2) of section 12 and section 20(1) of the said Act. One may notice that in sub-section (2) of section 17, the language used is that where the draft development plan submitted by an area development authority or, as the case may be, the authorised officer contains any proposal for reservation of any land for a purpose specified in clause (b) or clause (n) or clause (o) of sub-section (2) of section 12 and such land does not vest in the area development authority, the State Government shall not include the said reservation in the development plan unless it is satisfied that the authority would acquire the land. One may notice that in sub-section (1) of section 20 of the said Act, the language used is that the area development authority or any other authority for whose purpose land is designated in the final development plan for any purpose specified in clauses (b), (d), (f), (k), (n) or (o) of sub-section (2) of section 12 may acquire the land either by agreement or under the provisions of the Land

Acquisition Act, 1894. I my view, it would be incorrect to state that inclusion of clause (o) of sub-section (2) of section 12 in sub-section (2) of section 17 of the said Act would limit the scope of residuary clause (o) of sub-section (2) of section 12. The width of the provisions of clause (o) of sub-section (2) of section 12 has in no manner been tampered with by inclusion of the said provision in sub-section (2) of section 17 for the purpose of their requirement of the State Government to be satisfied that the land in question would be acquired within a period of ten years. The inclusion of clause (o) of sub-section (2) of section 12 in sub-section (2) of section only has relevance for the purpose of the State Government having to arrive at a satisfaction that the land in question would be acquired within a period of ten years when such acquisition is necessary. Clause (o) of sub-section (2) of section 12 is a residuary clause which provides for proposal for public as well as other purposes. It is, therefore, not possible to construe sub-section (2) of section 17 of the said Act as to indirectly limit the scope of clause (o) of sub-section (2) of section of the said Act.

25. I am also not able to agree with the suggestion of the learned advocates appearing for the

petitioners that this Court having made the rule absolute in the petition filed by them, no further action can be initiated by the Government. From the reading of the judgment of the Division Bench of this Court, it is apparent that this Court had while allowing the petitions of the land owners of Surat, specifically provided that Special Civil Application No.6461 of 1996 and 6591 of 1998 filed by the land-owners in Surat City are allowed. Their lands reserved having not been acquired within the prescribed time under section 20(2) of the Town Planning Act would stand de-reserved, irrespective of issuance of proposed revised development plan or the final revised development plan under section 21 of the Act. Rule in both the petitions is made absolute. From the copy of the petition filed by the petitioners in the earlier round of litigation, it can be seen that the petitioners had made several prayers including a prayer for declaration that section 21 of the said Act is ultra vires Articles 14, 19 and 300A of the Constitution of India. In the decision rendered by the Division Bench in the case of Patalina Sugar Mills (supra), the Division Bench specifically came to the conclusion that by harmoniously construing various provisions of the said Act, section 21 of the said Act is not rendered unconstitutional. If the argument of

the learned counsel Shri Sanjanwala is accepted in toto, it would amount to granting all prayers made in the petition which would also include declaring the provisions of the said Act as unconstitutional. In the judgment, the Division Bench has in terms declined to do so. In that view of the matter, I find that the order of the Division Bench has to be understood as emerging from the entire batch of petitions as culminating in the final relief granted which included the relief of striking down the reservation of the land in question.

26. Reliance placed by the learned advocates for the petitioners on the provisions of section 127 of the Maharashtra Regional and Town Planning Act, 1966 and the decision rendered by the Hon'ble Supreme Court in the case of Greater Mumbai Municipal Corporation (supra) for the purpose of contending that in the present case also the petitioners would have automatic right to develop the lands for residential use is not well-founded. Admittedly, there are significant differences between the provisions of section 127 of the Maharashtra Regional and Town Planning Act and section 20 of the present Act. In section 127 of the Maharashtra Regional and Town Planning Act, in addition to providing for lapsing of reservation, after a period of six months of

notice calling upon the authorities to acquire the land upon completion of ten years of reservation, it also provides that the land so released from reservation shall become available to the owners for the purpose of development as otherwise permissible in case of adjacent land under the relevant plan. In section 20 of the said Act, no such provision is made. Statutory provisions in both the Acts being different in this regard, it is not possible to import the philosophy of the Maharashtra Act into the provisions of Gujarat Act without there being any such parallel in the legislative intent. I am equally unimpressed by the contention raised on behalf of the petitioners that after the decision of the High Court and the Hon'ble Supreme Court in Palitana Sugar Mills (supra), the authority having released the lands of Bhavnagar land-owners from reservation and having designated the same for residential purpose, the same ought to have been done in case of Surat lands also and different treatment being meted out to the land-owners in Surat would amount to hostile discrimination. Requirements, necessities and ground realities in both areas which are geographically far apart from each other are bound to be different and cannot be compared without sufficient material on record. What prompted the Government to designate the lands in Bhavnagar for

residential use need not govern the lands in Surat. There cannot be allegation of discrimination between two incomparable parcels of lands where the situation is bound to be vastly different.

27. This brings me to the last aspect of the matter, namely, the legality of the decision of the Government on the anvil of reasonableness and having considered the necessary material. As noted earlier, it has been contended on behalf of the petitioners that the decision of the Government is wholly arbitrary and even if it is a policy decision, for want of sufficient material on record, the Government could not have concluded that it is necessary to designate the land in question for educational use.

27.1 In the case of Federation of Railway Officers Association v. Union of India, AIR 2003 SC 1344, the Hon'ble Supreme Court observed in para 12 as follows:

> “12. In examining a question of this nature where a policy is evolved by the Government judicial review thereof is limited. When policy according to which or the purpose for which discretion is to be exercised is clearly expressed in the statute, it cannot be an unrestricted discretion. On matters affecting policy and requiring technical expertise

Court would leave the matter for decision of those who are qualified to address the issues. Unless the policy or action is inconsistent with the Constitution and the laws or arbitrary or irrational or abuse of the power, the Court will not interfere with such matters."

27.2 In the decision of State of U.P. v. Johri Mal, reported in 2004 AIR SCW 3888, the Hon'ble Supreme Court observed that power of judicial review is not intended to assume supervisory role. It was further observed that while examining and scrutinizing the decision making process, it becomes inevitable to appreciate the facts of a given case as otherwise the decision cannot be tested on the ground of illegality, irrationality or procedural impropriety. How far the Court of judicial review can reappreciate the findings of facts depends on the ground of judicial review and if a decision is challenged as irrational it would well-nigh impossible to record a finding whether a decision is rational or irrational without first evaluating the facts of the case and coming to a plausible conclusion and then testing the decision of the authority on the touch-stone of the tests laid down by the Court with special reference to a given case. The following observations made by the Hon'ble Supreme Court in para

28 and 30 of the said decision can be noted :

> “28. The scope and extent of power of the judicial review of the High Court contained in Article 226 of the Constitution of India would vary from case to case, the nature of the order, the relevant statute as also the other relevant factors including the nature of power exercised by the public authorities, namely, whether the power is statutory, quasi judicial or administrative. The power of judicial review is not intended to assume a supervisory role or done the robes of omnipresent. The power is not intended either to review governance under the rule of law nor do the Courts step into the areas exclusively reserved by the supreme lex to the other organs of the State. Decisions and actions which do not have adjudicative disposition may not strictly fall for consideration before a judicial review Court. The limited scope of judicial review succinctly put are:
>
> (i) Courts, while exercising the power of judicial review, do not sit in appeal over the decisions of administrative bodies.
>
> (ii) A petition for judicial review would lie only on certain well-defined grounds.
>
> (iii) An order passed by an administrative authority exercising discretion vested in it, cannot be interfered in judicial review unless it is shown that exercise of discretion itself is perverse or illegal.
>
> (iv) A mere wrong decision without anything more is not enough to attract the power of judicial review;

the supervisory jurisdiction conferred on a Court is limited to seeing that Tribunal functions within the limits of its authority and that its decisions do not occasions miscarriage of justice.

(v) The Courts cannot be called upon to undertake the Government duties and functions. The Court shall not ordinarily interfere with a policy decision of the State. Social and economic belief of a Judge should not be invoked as a substitute for the judgment of the legislative bodies."

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"30. It is well-settled that while exercising the power of judicial review the Court is more concerned with the decision making process than the merit of the decision itself. In doing so, it is often argued by the defender of an impugned decision that the Court is not competent to exercise its power when there are serious disputed questions of facts; when the decision of the Tribunal or the decision of the fact finding body or the arbitrator is given finality by the statute which governs a given situation or which, by nature of the activity the decision maker's opinion on facts is final. But while examining and scrutinizing the decision making process it becomes inevitable to also appreciate the facts of a given case as otherwise the decision cannot be tested under the grounds of illegality, irrationality or procedural impropriety. How far the Court of judicial review can reappreciate the

findings of facts depends on the ground of judicial review. For example, if a decision is challenged as irrational, it would be well-nigh impossible to record a finding whether a decision is rational or irrational without first evaluating the facts of the case and coming to a plausible conclusion and then testing the decision of the authority on the touch-stone of the tests laid down by the Court with special reference to a given case. This position is well settled in Indian Administrative Law. Therefore, to a limited extent of scrutinizing the decision making process, it is always open to the Court to review the evaluation of facts by the decision maker."

28. Acutely conscious of the limited scope of judicial review of the policy of the Government, I had called for and perused the files of the Government which led the Government to propose and finally to provide for designation of the lands in question for educational purpose. Learned Additional Advocate General was kind enough to summon the files and supply the same to the Court for perusal. Learned advocates appearing for the petitioners indicated that they would be satisfied if the Court at least, at the first instance, peruses the files in order to examine whether there was sufficient material on record to enable the Government to form an opinion in this regard.

29. From the two files made available to the Court bearing Nos.VNM-1403-3307-L and VNM-1403-223-L, it can be seen that after the decision of the Hon'ble Supreme Court in the case of Bhavnagar University (supra), by which the decision of the Division Bench of this Court in the case of Palitana Sugar Mills (supra) was upheld, steps were initiated for regulating the use of the land in question. From the files made available to the Court, it was seen that under a letter dated 20th October 2003, Chief Town Planner, Gujarat State, Gandhinagar, made recommendations in respect of several parcels of land in SUDA area. With respect to the land in question, his opinion was as follows:

> "As per Supreme Court order dated 3.12.02, the reservation has lapsed. There is no provision in Gujarat Act about use of land once the reservation lapses. Referring Maharashtra Act, there it is mentioned that land to be put under predominant zone once reservation lapses. Therefore, considering the surrounding predominant residential use, these lands may be put under residential use under section 12(2)(a). Moreover, land can be acquired under LA Act as and when required. Education purpose is permissible in residential zone. By mistake, block No.116/P of Barthana-Vesu is shown in this reservation, which may be shown in residential use. The zoning may be finalised."

I am also shown yet another opinion of the Chief Town Planner which is undated in which also, similar suggestions were made by him to the Government. I find that thereafter the file moved through various stages and eventually, a note was placed before the Hon'ble Minister on 23rd April 2004. In the note, after giving the entire background of the previous litigation, it was suggested that the land should be de-reserved for the purpose of South Gujarat University and should be placed in appropriate zone. In the concluding paragraphs, note suggests that after releasing the lands from reservation, the same should be placed under residential zone. On 21.7.2004, the Hon'ble Minister offered the following comments on the note which when translated would read as under:

> “Reservation may be cancelled as suggested. However (for the lands which are being dereserved) educational zone in terms of section 12(2)(o) of the Gujarat Town Planning and Urban Development Act be provided and notification be issued accordingly.”

It was pursuant to this direction of the Hon'ble Minister recorded by him on 21st July 2004 that the preliminary notification dated 22nd July 2004 came to be issued by the Government calling for objections and

suggestions against the said proposal.

30. As noted earlier, Town Planning is a complex process which has acquired enormous importance in modern life. Considering the complex nature of developments, considering the conflicting interests of individual property holders and the public at large and considering the requirement of providing for a proper lay out for the future development of cities and its surrounding areas, as noted by the Hon'ble Supreme Court in the above mentioned decisions, town planning requires a great deal of complex nature of collections of material, examining of various aspects on consideration of large number of factors before deciding as to which area would be designated for which purpose. It is precisely because of these reasons that the Legislature has entrusted the State Government and the Area Development Authorities with widest possible latitude and width in deciding its policy matters while providing for different rules and regulations and restrictions for development of different areas in development plans. In the present case, however, I find that the directive of the Hon'ble Minister was not preceded by any exercise whatsoever to collect sufficient material to enable the Government to decide the proper zoning of the land in

question. His directive came as a bolt from the blue. The suggestion of the Chief Town Planner was to place the entire area in residential zone. The area development authority from the very beginning had suggested that the land in question be placed in residential zone. Neither the proposal of the area development authority nor the suggestion of the Chief Town Planner was final and it was open for the State Government to provide for any other purpose as may be available under the said Act. Such decision, however, had to be preceded by a proper exercise which would enable the Government to come to a reasonable and just conclusion. As noted earlier, though the power of this Court in judicial review in respect of matters of Government policy is extremely narrow, when it is found that the power exercised by the Government even while taking a policy decision has been tainted with complete lack of consideration of any material, such decision would be irrational and arbitrary. It is not only the power of the Court but the duty as well to strike down any such decision which is unreasonable, arbitrary and irrational. From the entire files, there is no suggestion whatsoever coming forth as to what prompted the Government to specify education zone for the land in question. The purpose is undoubtedly laudable. It is

always open for the Government to provide for a separate zone for schools and colleges if there is sufficient justification to arrive at such a decision. When one finds, however, that there is no exercise undertaken by anybody at all which would permit the Government to reasonably come to the conclusion that such zoning is necessary, I have no choice but to conclude that the decision of the Government was wholly arbitrary and irrational. Though in the affidavit in reply dated 22nd February 2005, filed by one Shri V.D.Vaaghela, Officer on Special Duty and Ex-Officio Deputy Secretary, Urban Development and Urban Housing Department, some justification is sought to be rendered for the designation in question, as noted in the earlier portion of this judgment, I find there is absolutely no justification available on the files. The contents of the affidavit in reply in this regard are not borne out from the record of the files. Such super-imposition and supplying of material through affidavit would not be of much use when I find that there is no material on record to support such a decision.

31. As noted earlier, great deal of material goes into town planning. It is a matter which governs large number of lives of the citizens residing in cities and

surrounding areas. It is a task to be performed by the experts of the field on the basis of available material with a view to moulding the developments of the cities in near future. Such planning has to be long-term, well considered, well thought out and with the help of authorities who are well-informed. In the present case, except the noting of the Hon'ble Minister suggesting change of user of the land from that of residential zone to education zone, there is absolutely no material on record on the basis of which such a decision could have been arrived at. Discretion howsoever wide has to be exercised within the four corners of law and has to be exercised upon consideration of relevant factors. Exercise of discretion which is based on extraneous consideration or which is based on non-consideration of any material would equally be irrational and arbitrary. To repeat, on going through the entire files, there is absolutely no material available on the files which prompted the Government to provide for a specific zone. Subsequent exercise of calling for objections and suggestions and having considered all such objections and suggestions would not in any way save otherwise illegal exercise. Even after issuing of the preliminary notification dated 22nd July 2004, except for considering the suggestions

and objections, there is no material on record which would even otherwise augment the view of the Government.

32. In above view of the matter, I find that the notification dated 28th September 2004 is illegal and unlawful and is therefore required to be and is hereby quashed and set aside. The petitions are accordingly allowed. Rule is made absolute accordingly with no order as to costs.

33. At the request of the learned Additional Advocate General, this judgment shall stand stayed upto 8th September, 2005.

(Akil Kureshi, J.)

(vjn)